Supreme Court, U.S.
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No. 01-663

In The

Supreme Court of the United States

ROBERT L. MONTGOMERY,

Petitioner,

v.

G. RAYMOND TRISLER.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Indiana

REPLY TO BRIEF IN OPPOSITION

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11 pp

QUESTIONS PRESENTED

I. WHETHER THE OATH TAKEN BY THE CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT TO *"ADMINISTER JUSTICE WITHOUT RESPECT TO PERSONS, AND DO EQUAL RIGHT TO THE POOR AND TO THE RICH"* IS APPLICABLE TO APPELLANT ROBERT MONTGOMERY IN THIS CASE.

II. WHETHER A CIVIL FINE IN A RATIO OF COMPENSATORY DAMAGES TO PUNITIVE DAMAGES OF 109+ TO 1 IS EXCESSIVE PUNISHMENT, WHERE IT BEARS NO RELATIONSHIP TO COMPENSABLE INJURIES WHERE NONE ARE SUSTAINED?

III. WHETHER $1,640,000.00 IN PUNITIVE DAMAGES WHEN TACKED ON TO $15,000.00 IN COMPENSATORY DAMAGES IN A RATIO OF 109+ TO 1 CONSTITUTES EXCESSIVE PUNISHMENT THAT VIOLATES APPELLANT'S 5TH AND 8TH AMENDMENT RIGHTS AGAINST CRUEL AND UNUSUAL PUNISHMENT MADE APPLICABLE TO THE STATES BY THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION?

IV. WHETHER A RATIO OF COMPENSATORY DAMAGES TO PUNITIVE DAMAGES OF 109+ TO 1, THAT IS GROSSLY DISPROPORTIONAL TO THE GRAVITY OF ANY OFFENSE COMMITTED MUST BE REVIEWED AS TO EXCESSIVENESS *DE NOVO ON APPEAL AS ENUNCIATED BY THE SUPREME COURT OF THE UNITED STATES IN COOPER INDUSTRIES, INC. V. LEATHERMAN TOOL GROUP, INC.* 532 U.S. 674, 121 S.CT. 1678, 149 L.ED.2D 674 (2001), AND RELATED DECISIONS?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

CONSTITUTIONAL PROVISIONS INVOLVED 1

I. THE UNITED STATES SUPREME COURT HAS JURISDICTION 1

II. THE STATE COURT DECISIONS BELOW ARE UNMISTAKABLY INCORRECT IN REFUSING TO APPLY STARE DECISIS TO THE FACTS OF THIS CASE THE DECISION OF THIS COURT IN *COOPER INDUSTRIES, INC. v. LEATHERMAN TOOL GROUP, INC.*, 529 U.S. ___, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001) 7

III. THE $1,640,000.00 IN PUNITIVE DAMAGES TACKED ON TO THE $15,000.00 IN COMPENSATORY DAMAGES IS A RATIO OF 109+ TO 1 THAT CONSTITUTES EXCESSIVE PUNISHMENT AND VIOLATES APPELLANT'S 5TH AND 8TH AMENDMENT RIGHTS AGAINST CRUEL AND UNUSUAL PUNISHMENT MADE APPLICABLE TO THE STATES BY THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION 5

CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES

BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996) 5

Browning-Ferris Industries of Vermont, Inc. v. Kelko Disposal, Inc., et al., 492 U.S. 257, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989) 5

Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. ___, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001) 6, 7

Executive Builders, Inc. v. Trisler, 741 N.E.2d 351 (Ind.Ct.App.2000) 5

CONSTITUTIONS

U.S. Const. amend. V 1

U.S. Const. amend. VIII 5

U.S. Const. amend. XIV 1, 6

Indian Const. art. 1, Section 23 1

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V [1791]:

No person shall be . . . deprived of . . . property without due process of law . . .

AMENDMENT VIII [1791]:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV [1868]:

Section 1 . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

I. THE UNITED STATES SUPREME COURT HAS JURISDICTION.

Robert Montgomery has been denied the equal protection of the laws, and due process of law guaranteed to him by the 5th and 14th Amendments to the United States Constitution, and Article 1, Section 23 of the Indiana Constitution.

This case presents important constitutional questions in cases against tort-feasors where the punishment is excessive and grossly disproportional to the gravity of any offense committed, based solely upon the estimated gross wealth of the tort-feasor, and was not reviewed *de novo* on appeal by the Court of Appeals to determine its excessiveness.

The jury, did not, as Respondent would have this Court believe award ***punitive damages jointly and severally against Executive Builders, Inc., Dolores Montgomery, and Robert Montgomery in the amount of $1,640,000.*** The jury did no such thing. It returned ***separate compensatory damage verdicts*** against Executive Builders, Inc. in the amount of $143,000.00, against Dolores Montgomery in the amount of $20,000.00 and the least against Robert Montgomery in the amount of $15,000.00 **that aggregated $178,000.00.** Punitive damages as a civil fine of $1,640,000.00 were awarded only against Robert Montgomery **in a ratio of 109+ to 1, not 9 to 1. The ratio of compensatory damages to punitive damages is 109+ to 1, not the 9 to 1 ratio erroneously computed by the Court of Appeals that was not disturbed by the Indiana Supreme Court on Petition to Transfer.**

The jury's basis for levying a civil fine of $1,640,000 against Robert Montgomery was the bringing of an ***"unfounded lawsuit"*** **by Executive Builders, Inc. against G. Raymond Trisler.** The **"reality of events"** is that ***Robert Montgomery was solely targeted for his wealth, because he was "rich"*** and:

> ***" . . . Executive Builders was a penniless debt-ridden corporate shell and Dolores Montgomery had a very limited income. The facts were made known to the jury after allocation of the compensatory damages of and during the punitive damages stage. . . . Under those facts, the Court of Appeals of Indiana considered the ratio of punitive to compensatory damages to be "nine to one."*** **[Quoted from Footnote 1, Respondent's Brief, and repeated at p. 12].**

The estimated gross wealth of Robert Montgomery was the sole basis upon which the trial court presented the punitive damages portion of this case to the jury, after it returned a $15,000.00 compensatory damages verdict against Robert Montgomery. The jury's punitive damages verdict of $1,640,000.00 was based on wealth alone and was in a ratio of 109+ to 1, not 9 to 1 as Respondent wants this Court to believe. **Neither the Court of Appeals nor the Indiana Supreme Court conducted a *de novo review* to determine whether a ratio of 109+ to 1 of compensatory damages to the punitive damages awarded was grossly disproportionate.** Respondent justifies excessiveness based solely on wealth, in his Brief in opposition, (pp. 6-7) that ***the gravity of the offense, that of Executive Builders, Inc. filing a lawsuit against Respondent and in "issuing a number of false statements" . . . left "Robert with 90% of his wealth . . . to deter him and others from engaging in such conduct in the future."***

A jury's award of punitive damages is not a finding of fact. Compensatory damages redress the concrete loss that a plaintiff has suffered by reason of the defendant's wrongful conduct. Punitive damages are private fines intended to punish the defendant and deter future wrongdoing. The jury's assessment of the former is essentially a factual determination, but its imposition of the latter is an expression of its moral condemnation. The 14th Amendment's Due Process Clause imposes substantive limits on excessive fines. The 8th Amendment guarantees against cruel and unusual punishment was made applicable to the States by the 14th Amendment. The Indiana Court of Appeals and the Indiana Supreme Court administered justice to Robert Montgomery only *"with*

respect to his wealth". A civil fine of compensatory damages to punitive damages in a ratio of 109+ to 1 based solely on the wealth of the tort-feasor is an excessive fine against Robert Montgomery who was President of the Executive Builders, Inc., the company that sued Mr. Trisler. Justice based solely on wealth cannot be administered equally to the rich and the poor.

The Judiciary Act of 1989 prescribed the judicial oath to be taken by the Chief Justice of the Supreme Court which has been modified over the years. The current oath reads as follows:

Respondent repeats at pp. 11 and 12 of his Brief in Opposition that:[1]

> ***"Robert Montgomery's assets were in excess of $16 million dollars. (R. pp. 3901-3953), the 'wealth of Executive Builders was in a negative amount of hundreds of thousands of dollars (R. p. 3907), and Dolores Montgomery's annual income was $15,000.00 per year. (R. p. 3950). The jury then returned a verdict awarding punitive damages against Robert Montgomery in the sum of $1,640,000.00 (R. p. 1623), and no punitive damages against Executive Builders or Dolores Montgomery. (R. pp. 1622, 1624)."***

The use of compensatory damages as a calibrating factor has a long history dating back at least 700 years.

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[1] ***"I [name], do solemnly swear or affirm, that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as [a justice of the Supreme court], under the Constitution and laws of the United States. So help me God."***

BMW of North America, Inc. v. Gore, 517 U.S. 559, 581 (1996). The Court analyzed each of the factors to be applied in considering an award of punitive damages under three (3) tests laid down (517 U.S. at 574), and concluded in that case that:

> First, the degree of reprehensibility was not great;
>
> Second, there was no reasonable relationship between the punitive damage award and the compensatory damage award; and
>
> Third, the civil penalties for similar misconduct were far lower.

Robert Montgomery challenged as excessive, the award of punitive damages in this case raised, acknowledged, but not reviewed as to excessiveness *de novo* by the Court of Appeals.[2]

Unlike the Petitioner in ***Browning-Ferris Industries of Vermont, Inc. v. Kelko Disposal, Inc., et al.,* 492 U.S. 257, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989) where this Court held the excessive fine clause of the 8th Amendment inapplicable to punitive damage awards between private parties, 492 U.S., at 276-277, 109 S.Ct. 2909, 106 L.Ed.2d 219, Robert Montgomery raised the constitutional issue of an 8th Amendment excessive fine of 109+**

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[2] In *Executive Builders, Inc. v. Trisler,* 741 N.E. 2d 351, (Ind.Ct.App. 2000) at 360 the Court of Appeals said: ***"Moreover, Robert [Montgomery] maintained that the award violated his rights to due process under the United States Constitution and Indiana Constitution in that the amount awarded was impermissibly excessive."***

to 1 to compensatory damages, as a violation of the 14th Amendment because of the excessive and disproportional size of the punitive damages that violated his rights under the due process clause of the 14th Amendment on substantive grounds, which he raised before the trial court, the Indiana Court of Appeals and the Indiana Supreme Court.

The Supreme Court of Indiana on July 18, 2001 allowed the Judgment of the Court of Appeals of December 6, 2000 as corrected on December 14, and December 20, 2000 to stand, and did not apply the highly deferential standard required under the principle of *stare decisis* under the intervening decision of the Supreme Court of the United States on May 14, 2001 that required that punitive damages be reviewed under a *de novo standard* in *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. ___, 121 S.Ct. 1678, 149 L.Ed.2d 674 (2001) which judicial precedent was called to the attention of the Indiana Supreme Court.[3]

Counsel for Robert Montgomery did however on August 20, 2001 specifically address the flawed decision

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[3] Respondent at p. 8 of his Brief in Opposition, makes a specious argument that, *"Clearly Montgomery received a full and independent de novo appellate review of the punitive damages assessment of the Court of Appeal of Indiana pursuant to the standards outlined in Cooper Industries, Inc. v. Leatherman Tool Group, Inc. supra (cited in full at p. 8.) . . . "* It never happened. The Court of Appeals Decision in *Cooper Industries v. Leatherman* was not decided by this Court until the following year on May 14, 2001 and could not have been either considered or applied in the year 2000 by the Indiana Court of Appeals.

of the Court of Appeals in a belated Motion he filed with the Indiana Supreme Court, that denied Transfer and let stand a punitive damages award ratio of 109+ to 1 in violation of Robert Montgomery's constitutional rights against excessive fines and cruel and unusual punishment and in such Motion for Reconsideration attached a summary copy of the Supreme Court of the United States decision in ***Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*** that it did not follow or apply.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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